

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RAFAEL A JOSEPH,

No. C-14-02200 DMR

Plaintiff(s),

No. 14-16873, United States Court of
Appeals for the Ninth Circuit

v.

PATRICK R DONAHOE,

**ORDER DENYING *IN FORMA*
PAUPERIS STATUS ON APPEAL**

Defendant(s).

On July 9, 2014, the court granted *pro se* Plaintiff Rafael A. Joseph's application for leave to proceed *in forma pauperis* and dismissed his complaint with leave to amend. [Docket No. 5.] Plaintiff timely filed an amended complaint. [Docket No. 6.] Upon review of Plaintiff's amended complaint, the court found that Plaintiff had not remedied the deficiencies identified in the court's dismissal order. The court also found that he had failed to state a new claim for breach of fiduciary duty based upon 5 U.S.C. § 2301(b)(2) and that amendment of the claim would be futile. As Plaintiff had been given an opportunity to address the deficiencies in his original claims, the court dismissed the action without prejudice on August 14, 2014. [Docket No. 8.] Plaintiff has appealed from that order, and the Ninth Circuit has referred the matter to this court for the limited purpose of determining whether Plaintiff's *in forma pauperis* status should continue for the appeal. [Docket No. 12.]

“An appeal may not be taken *in forma pauperis* if the trial court certifies in writing that it is not taken in good faith.” 28 U.S.C. § 1915(a)(3). This section is generally construed to mean that an appeal must not be frivolous. *See, e.g., Coppedge v. United States*, 369 U.S. 438, 445 (1962) (holding that the term “‘good faith’ . . . must be judged by an objective standard” and is demonstrated when appellant seeks review “of any issue not frivolous”); *Ellis v. United States*, 356 U.S. 674, 674 (1958) (noting that “[i]n the absence of some evident improper motive, the applicant’s good faith is established by the presentation of any issue that is not plainly frivolous”); *Hooker v. American Airlines*, 302 F.3d 1091, 1092 (9th Cir. 2002) (stating that “[i]f at least one issue or claim is found to be non-frivolous, leave to proceed in forma pauperis on appeal must be granted for the case as a whole”).

Having reviewed this matter, the court concludes there are no valid grounds on which to base an appeal. Accordingly, the court certifies that Plaintiff’s appeal is not taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) and revokes his *in forma pauperis* status.

The Clerk of the Court is directed to serve a copy of this order on Plaintiff and the Ninth Circuit.

IT IS SO ORDERED.

Dated: October 1, 2014

